

Decision Extending the mandate of the Independent Judicial Commission

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling Article II, 8 of the last said Agreement according to the terms of which the High Representative may, in addition to the Civilian Commissions referred to specifically in Article II thereof, establish other civilian commissions to facilitate the execution of his mandate;

Recalling further paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Mindful of paragraph I.2.a of the Conclusions of the said Bonn Conference which recognised “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Guided by paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which “emphasize [d] the importance of intensified judicial reform efforts, co-coordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]” and “urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations”;

Considering the Declaration of the Peace Implementation Council (Brussels, 23/24 May 2000) calling for a truly independent and impartial judiciary to ensure the Rule of Law in all criminal, civil and commercial matters and noting “the continued need for an international oversight institution for judicial reform pending OHR’s solution of the Judicial Reform programme” and that the Council “supports the continuing efforts of the High Representative to lead the Judicial Reform effort and co-ordinate the efforts of the international community on the issue”;

Taking into account the Communiqué of the Steering Board of the Peace Implementation Council (Sarajevo, 13 July 2000) where the “Steering Board and the High Representative agreed that the issue of judicial reform and the promotion of the rule of law needed a sustained effort by the International Community. To this end, the High Representative will establish the Independent Judicial Commission -”;

Noting the Communiqué by the Steering Board of the Peace Implementation Council of 28 February 2002, in which the Steering Board endorsed the reinvigorated strategy for judicial reform proposed by the Independent Judicial Commission for 2002/03, among other things recognising the importance of the creation of a High Judicial Council for BiH and the restructuring of the court system, sentiments that were reiterated in a further Communiqué of 7 May 2002;

Recalling the enactment of the laws on the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina, the High Judicial and Prosecutorial Council of the Republika Srpska, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and the Directive 23 May 2002, in order to strengthen the independence of the judiciary and provide for the re-appointment of judges and prosecutors in line with the restructuring of courts and prosecutors’ offices;

Recognizing that, among other things, the role of the Independent Judicial Commission is to serve as a secretariat to the High Judicial and Prosecutorial Councils during their transitional period;

Further noting the Communiqué by the Steering Board of the Peace Implementation Council of 25-26 September 2003, in which the Steering Board: “agreed to extend the Independent Judicial Commission’s mandate, as well as the transitional period of the High Judicial and Prosecutorial Councils, until 31 March 2004. The Steering Board strongly supported the establishment of one single HJPC at the State level and urged the BiH authorities to contribute to this without delay.”

Recalling the previous Decisions of the High Representative numbers 94/01 on Establishment of the Independent Judicial Commission, published in the “Official Gazette of Bosnia and Herzegovina”, 10/01, “Official Gazette of the Federation of Bosnia and Herzegovina”, 14/01 and in the “Official Gazette of Republika Srpska”, 17/01, 16/02 on the Mandate of the Independent Judicial Commission, published in the “Official Gazette of the Federation of Bosnia and Herzegovina”, 40/02 and in the “Official Gazette of Republika Srpska”, 55/02 and 95/03 on the new Mandate of the Independent Judicial Commission, published in the “Official Gazette of Bosnia and Herzegovina”, 3/03.

Having considered the totality of the matters aforesaid, I hereby issue the following

DECISION

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1. This Decision provides for the extension of the mandate of the Independent Judicial Commission and vests the Independent Judicial Commission with responsibilities and authorities as hereinafter set out.
2. The mandate of the Independent Judicial Commission will continue to be as follows:
 - to serve as the secretariat of the High Judicial and Prosecutorial Council of Republika Srpska, of the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina, and of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina during the transitional period which lasts until 31 March;
 - to serve as the Disciplinary Prosecutor in disciplinary matters before the afore mentioned Councils;
 - to provide advice to local authorities and professional legal organizations on all issues affecting the court system, its restructuring, and administration.
3. Furthermore, the Independent Judicial Commission shall be authorized, in consultation with the aforementioned Councils, to take all necessary measures to ensure the appropriate downsizing and transition of the remaining Independent Judicial Commission staff into a secretariat for a High Judicial and Prosecutorial Council, if established at state level pursuant to the High Representative’s Directive dated 23 May 2002.
4. In carrying out its mandate and responsibilities, the Independent Judicial Commission shall have the authority to initiate contacts with international organizations and domestic bodies, agencies, institutions, or organizations to promote rule of law projects affecting the court system, its restructuring, and its support of the High Judicial and Prosecutorial Councils.
5. All courts, prosecutors’ offices and governmental agencies at all levels, including all judges, prosecutors, court staff and government officials are obliged to co-operate with the IJC and to disclose any information that the IJC considers necessary for it to carry out its responsibilities under paragraphs 2 and 3 of this Decision.
6. The mandate of the Independent Judicial Commission is prolonged from 1 January 2003 and shall expire on 31 March 2004.
7. This decision comes into force forthwith and will be published in the Official Gazette of Bosnia and Herzegovina without delay.

Sarajevo, 20 Novembar 2003

*Paddy Ashdown,
High Representative*